



Bart L. Graham
Commissioner

State of Georgia
Department of Revenue

Suite 15300
1800 Century Boulevard
Atlanta, Georgia 30345
(404) 417-2100

NOTICE

RE: (I) Repeal of current Rule 560-12-2-.34 "Employees' Meals." and adoption of new Rule 560-12-2-.34 "Employees' Meals or Beverages."

(II) Repeal of current Rule 560-12-2-.63 "Machinery, Replacement Manufacturing. Amended."

(III) Repeal of current Rule 560-12-2-.100 "Orphans' Homes Operated as Nonprofit Organizations" and adoption of new Rule 560-12-2-.100 "Child-caring Institution, Child-placing Agency, or Maternity Home."

(IV) Adoption of new Rule 560-12-3-.22 "Application for Certificate of Exemption for a Child-caring Institution, Child-placing Agency, or Maternity Home."

(V) Amendment of current Rule 560-12-2-.106 "United States Government Defense Contractors."

TO ALL INTERESTED PERSONS AND PARTIES:

In compliance with O.C.G.A. § 50-13-4, the Georgia Department of Revenue gives notice that it proposes to amend Chapter 560-12-2 of the Rules and Regulations of the State of Georgia by repealing Rule 560-12-2-.34, entitled "Employees' Meals." and adopting in its place new Rule 560-12-2-.34, entitled "Employees' Meals or Beverages."

The Department also proposes to amend Chapter 560-12-2 by repealing Rule 560-12-2-.63, entitled "Machinery, Replacement Manufacturing. Amended." There shall be no rule adopted in its place at this time.

The Department also proposes to amend Chapter 560-12-2 by repealing Rule 560-12-2-.100, entitled "Orphans' Homes Operated as Nonprofit Organizations" and adopting in its place new Rule 560-12-2-.100, entitled "Child-caring Institution, Child-placing Agency, or Maternity Home."

The Department also proposes to amend Chapter 560-12-3 by adopting new Rule 560-12-3-.22, entitled "Application for Certificate of Exemption for a Child-caring Institution, Child-placing Agency, or Maternity Home."

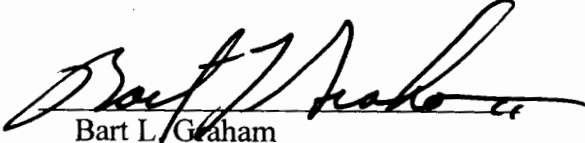
The Department also proposes to amend Chapter 560-12-2 by amending Rule 560-12-2-.106, entitled "United States Government Defense Contractors."

Attached with this notice are exact copies and synopses of the proposed rules. The proposed rules are being adopted and/or repealed under the authority of O.C.G.A. §§ 48-2-12 and 48-8-3(34).

The Department of Revenue shall consider the adoption and/or repeal of the above referenced proposed Rules at 10:00 a.m. on July 6, 2006 in Suite 15300 of the Department's headquarters at 1800 Century Blvd. NE, Atlanta, GA 30345-3205.

The Department must receive all comments regarding the above referenced proposed Rules from interested persons no later than 10:00 a.m. on July 6, 2006. Written comments must be sent to: Commissioner, Georgia Department of Revenue, 1800 Century Blvd. N.E., Suite 15300, Atlanta, GA 30345-3205. Electronic comments must be sent to regcomments@dor.ga.gov. Facsimile comments must be sent to (404) 417-6651. **Please reference "Notice Number SUT-2006-2" on all comments and include the specific Rule number(s) for which the comments apply.**

Dated: June 2, 2006


Bart L. Graham
Commissioner, Department of Revenue

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE SALES AND USE TAX DIVISION

CHAPTER 560-12-2 SUBSTANTIVE RULES AND REGULATIONS

560-12-2-.106 United States Government Defense Contractors.

The purpose of Proposed Rule 560-12-2-.106 is to provide guidance regarding the administration of O.C.G.A. § 48-8-3(58), which provides for an exemption from state and local Georgia sales and use tax with respect to certain overhead materials purchased by United States Government Defense Contractors due to a change in the exemption's sunset date.

Paragraph (1) of the Rule explains the Rule's purpose.

Paragraph (2) of the Rule provides for definitions of the terms as related to the exemption.

Paragraph (3) of the Rule provides for the application of the exemption and reflects the exemption's new sunset date.

**RULES
OF
DEPARTMENT OF REVENUE
SALES AND USE TAX DIVISION**

**CHAPTER 560-12-2
SUBSTANTIVE RULES AND REGULATIONS**

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560-12-2-.106 United States Government Defense Contractors.

**560-12-2-.106 United States Government Defense
Contractors.**

(1) Purpose. The purpose of this Rule is to provide guidance regarding the direct consumable supplies and overhead materials exempt from Georgia sales and use tax in accordance with O.C.G.A. § 48-8-3(58).

(2) Definitions. For the purposes of qualifying for the exemption provided for by O.C.G.A. § 48-8-3(58), and as used in this Rule, the following definitions and explanation of terms shall apply:

(a) "Appropriate title passing clauses" means those title passing clauses whereby title to overhead materials or direct consumable supplies purchased for use in fulfilling a government contract passes to the United States Department of Defense or the National Aeronautics and Space Administration before the government contractor uses the property.

(b) "Direct consumable supplies" means supplies, tools, or equipment used or consumed in the performance of a government contract which are specifically identified to the government contract and the actual cost of which is charged as a direct item of cost to the specific contract. Direct consumable supplies include, but are not limited to, property used to repair items of capital

equipment when a portion of the contractor's use is properly allocable to government contracts, notwithstanding the fact that title to the property being repaired remains with the government contractor. The term "direct consumable supplies" does not include tangible personal property that is incorporated into real property.

(c) "Government contract" means a contract directly between the United States Department of Defense or the National Aeronautics and Space Administration and a government contractor, for the purpose of national defense, to sell services or tangible personal property which contain the appropriate title passing clauses for overhead materials and direct consumable supplies. The term "government contract" does not include any contract providing for the construction, improvement, maintenance, or repair of or to real property, or to the purchase of tangible personal property for use in fulfilling such contracts.

(d) "Government contractor" means any person who enters into a government contract, for the purpose of national defense, directly with the United States Department of Defense or the National Aeronautics and Space Administration to sell services or tangible personal property. This can include a manufacturer, modifier, assembler or repairer of tangible personal property, or seller of services. The term "government contractor" also includes a subcontractor who enters into a contract directly with a government contractor as defined in the first sentence of this paragraph and who incorporates the appropriate title passing clauses. The term "government contractor" does not include any person who enters into a contract to construct, improve, maintain, or make repairs on or to real property, or make purchases of tangible personal property for use in fulfilling such contracts.

(e) "Overhead materials" means any tangible personal property used or consumed in the performance of a contract between the United States Department of Defense or the National Aeronautics and Space Administration and a government contractor, the cost of which is charged to an expense account and allocated to various

United States government contracts based upon generally accepted accounting principles, and consistent with government contract accounting standards. The term "overhead materials" does not include tangible personal property which is incorporated into real property.

(3) Application of Exemption.

(a) Direct Consumable Supplies, Tools or Equipment. Sales to a government contractor of direct consumable supplies, tools or equipment, are considered to be sales for resale to the United States Department of Defense or the National Aeronautics and Space Administration if used in a government contract containing the appropriate title passing clauses. The exemption will apply to these sales even though the tangible personal property does not become a component part of the tangible personal property or the services provided by the government contractor. The government contractor may purchase direct consumable supplies, tools or equipment without payment of the tax by issuing a properly executed Certificate of Exemption, Form ST-5, to the appropriate vendor. If the government contractor uses the tangible personal property prior to title passing to the United States Department of Defense or the National Aeronautics and Space Administration, the tax will apply to the sales or use by the government contractor.

(b) Overhead Materials. Sales to a government contractor of overhead materials used in a government contract containing the appropriate title passing clauses for overhead materials shall qualify for a phased-in exemption from sales and use tax as follows:

1. Transactions occurring during the period from January 1, 1997 through December 31, 1997, shall qualify for a 25 percent exemption.

2. Transactions occurring during the period from January 1, 1998 through December 31, 1998, shall qualify for a 50 percent exemption.

3. Transactions occurring during the period from January 1, 1999 through December 31, 1999, shall qualify for a 75 percent exemption.

4. Transactions occurring during the period from January 1, 2000 through December 31, ~~2006~~ 2008, shall qualify for a 100 percent exemption.

5. The exemption for overhead materials shall stand repealed for transactions beginning January 1, ~~2007~~ 2009, and thereafter.

Sales to a government contractor of overhead materials used exclusively in a government contract may be purchased without payment of the tax based on the phased-in exemption percentage by issuing a properly executed Certificate of Exemption, Form ST-5, to the appropriate vendor. The government contractor shall accrue and remit on the sales and use tax report, Form ST-3, the applicable percentage of tax due on the phased-in exemption for overhead materials.

(c) Sales to a government contractor of direct consumable supplies, tools, equipment or overhead materials for use in a government contract which do not contain the appropriate title passing clauses, or any other use, shall not qualify for exemption from sales or use tax. The appropriate title passing clauses contained in the government contract will determine if title to the direct consumable supplies and overhead materials passes to the government, and the time at which title does pass. In the absence of the appropriate title passing clauses, the tax will apply to either the sale or use by a government contractor of such direct consumable supplies and overhead materials. In a case where the cost of direct consumable supplies or overhead materials are charged to an expense account which is then allocated to various

locations, cost centers or contracts, some of which are engaged in non-government contracts, it will be considered that title did not pass prior to use of the property, and tax will apply with respect to the purchase or use of the property charged to the expense account. If the item is specifically accounted for as being charged to a specific government contract containing the appropriate title passing clauses the tax will not apply. Property will be considered charged to a specific government contract when it is allocated pursuant to the Cost Accounting Standard Disclosure Statement, generally accepted accounting principles, or accounting standards promulgated by the Cost Accounting Standards Board. The government contractor shall be responsible for maintaining adequate records to substantiate the exemption provided for in this Rule. Any government contractor who fails to maintain sufficient documentation shall pay the amount of tax that would have been imposed on the sales or use of such tangible personal property.

Authority O.C.G.A. § 48-2-12.